

§ 301.6222(b)-3

26 CFR Ch. I (4-1-09 Edition)

partnership return. Any additional tax resulting from that computational adjustment may be assessed without either the commencement of a partnership proceeding or notification to the partner that all partnership items arising from that partnership will be treated as nonpartnership items. However, if a partner notifies the Internal Revenue Service of the inconsistent treatment of a partnership item in the manner prescribed in § 301.6222(b)-1, the Internal Revenue Service generally may not make an adjustment with respect to that partnership item unless the Internal Revenue Service—

(1) Conducts a partnership-level proceeding; or

(2) Notifies the partner under section 6231(b)(1)(A) that all partnership items arising from that partnership will be treated as nonpartnership items. See, however, §§ 301.6231(c)-1 and 301.6231(c)-2 for special rules relating to certain applications and claims for refund based on losses, deductions, or credits from abusive tax shelter partnerships.

(b) *Partner protected only to extent of notification.* (1) A partner who reports the inconsistent treatment of partnership items on the partner's return is protected from computational adjustments under section 6222(c) only with respect to those partnership items the inconsistent treatment of which is reported. Thus, if a partner notifying the Internal Revenue Service with respect to one item fails to report the inconsistent treatment of another item, the partner is subject to a computational adjustment with respect to that other item.

(2) The following example illustrates the principles of this paragraph (b):

Example. Partner A of Partnership P treats a deduction and a capital gain arising from P on A's return in a manner that is inconsistent with the treatment of those items by P. A reports the inconsistent treatment of the deduction but not of the gain. A is subject to a computational adjustment under section 6222(c) with respect to the gain.

(c) *Adjustments in a separate proceeding not limited to conforming adjustments.* (1) If the Internal Revenue Service conducts a separate proceeding with a partner whose partnership items are treated as nonpartnership items under section 6231(b), the Internal Revenue

Service is not limited to making adjustments that merely conform the partner's return to the partnership return.

(2) *Example.* The following example illustrates the principles of this paragraph (c):

Example. Partnership P allocates to E, one of its partners, a loss of \$8,000. E, however, claims a loss of \$9,000 and reports the inconsistent treatment. The Internal Revenue Service notifies E that it will treat all of E's partnership items arising from P as nonpartnership items. As a result of a separate proceeding with E, the Internal Revenue Service may issue a deficiency notice which could include reducing the loss to \$3,000.

(d) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6222(b)-2T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50546, Oct. 4, 2001]

§ 301.6222(b)-3 Partner receiving incorrect schedule.

(a) *In general.* A partner shall be treated as having complied with section 6222(b)(1)(B) and § 301.6222(b)-1 with respect to a partnership item if the partner—

(1) Demonstrates that the treatment of the partnership item on the partner's return is consistent with the treatment of that item on the schedule prescribed by the Internal Revenue Service and furnished to the partner by the partnership showing the partner's share of income, credits, deductions, etc.; and

(2) Elects in accordance with the rules prescribed in paragraph (b) of this section to have this section apply with respect to that item.

(b) *Election provisions—(1) Time and manner of making election.* The election described in paragraph (a) of this section shall be made by filing a statement with the Internal Revenue Service office issuing the notice of computational adjustment within 30 days after the notice is mailed to the partner.

(2) *Contents of statement.* The statement described in paragraph (b)(1) of this section shall be—

(i) Clearly identified as an election under section 6222(b)(2);

(ii) Signed by the partner making the election; and

(iii) Accompanied by copies of the schedule furnished to the partner by the partnership and of the notice of computational adjustment. The partner need not enclose a copy of the notice of computational adjustment, however, if the partner clearly identifies the notice of computational adjustment. Generally, the requirement described in paragraph (a)(1) of this section will be satisfied by attaching to the statement a copy of the schedule furnished to the partner by the partnership. However, if it is not clear from the information contained on the schedule that the treatment of the partnership item on the schedule is consistent with the partner's treatment of such item on the partner's return the statement shall also include an explanation of how the treatment of such item on the schedule is consistent with the treatment on the partner's return with respect to the characterization, timing, and amount of such item.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6222(b)-3T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50546, Oct. 4, 2001]

§ 301.6223(a)-1 Notice sent to tax matters partner.

(a) *In general.* For purposes of subchapter C of chapter 63 of the Internal Revenue Code, a notice is treated as mailed to the tax matters partner on the earlier of—

(1) The date on which the notice is mailed to “THE TAX MATTERS PARTNER” at the address of the partnership (as provided on the partnership return, except as updated under § 301.6223(c)-1); or

(2) The date on which the notice is mailed to the person who is the tax matters partner at the address of that person (as provided on the partner's return, except as updated under § 301.6223(c)-1) or the partnership. See § 301.6223(c)-1 for rules relating to the information used by the Internal Revenue Service in providing notices, etc.

(b) *Example.* The provisions of this section may be illustrated by the following example:

Example. Partnership P designates B as its tax matters partner in accordance with § 301.6231(a)(7)-1(b). On December 1 a notice of the beginning of an administrative proceeding is mailed to “THE TAX MATTERS PARTNER” at the address of P. On January 10, a copy of the notice is mailed to B at B's address. December 1 is treated as the date that the notice was mailed to the tax matters partner.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(a)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50547, Oct. 4, 2001]

§ 301.6223(a)-2 Withdrawal of notice of the beginning of an administrative proceeding.

(a) *In general.* If the Internal Revenue Service, within 45 days after the day on which the notice specified in section 6223(a)(1) is mailed to the tax matters partner, decides not to propose any adjustments to the partnership return as filed, the Internal Revenue Service may withdraw the notice specified in section 6223(a)(1) by mailing a letter to that effect to the tax matters partner within that 45-day period. Even if the Internal Revenue Service does not withdraw the notice specified in section 6223(a)(1), the Internal Revenue Service is not required to issue a notice of final partnership administrative adjustment. If the Internal Revenue Service withdraws the notice specified in section 6223(a)(1), neither the Internal Revenue Service nor the tax matters partner is required to furnish any notice with respect to that proceeding to any other partner. Except as provided in paragraph (b) of this section, a notice specified in section 6223(a)(1) which has been withdrawn shall be treated for purposes of subchapter C of chapter 63 of the Internal Revenue Code as if that notice had never been mailed to the tax matters partner.

(b) *Internal Revenue Service may not reissue notice except under certain circumstances.* If the notice specified in section 6223(a)(1) was mailed to the tax